



GUIDE TO THE SENIOR EXECUTIVE SERVICE

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UNITED STATES OFFICE OF
PERSONNEL MANAGEMENT

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ABOUT THIS GUIDE

The U.S. Office of Personnel Management prepared this *Guide to the Senior Executive Service* as a tool for agency managers and senior executives. The guide provides general information about key features of the SES. This guide and additional information about the SES can be found on OPM's internet website at: www.opm.gov/SES.

Human resources management is integral to the achievement of agency missions. Not only can the thoughtful and effective use of human resources management elevate an agency's pursuit of its objectives, but inattention will detract inevitably from an agency's ability to do its job. The key is leadership. Exceptional leaders with the ability to design and implement strategies that maximize employee potential and foster high ethical standards will enable the Government to serve the American people effectively.

The Government needs executives and managers who can lead and motivate people, who are results-driven and achieve those results through partnerships and building coalitions, and who have a keen business sense about using their resources – especially their valuable human resources – to get the best results for all Americans.

The Office of Personnel Management and the Human Resources community are available to help agencies select, develop, and manage a high quality senior executive cadre and a general workforce for the 21st century. Agency Human Resources Directors can answer questions about the SES, or you may contact OPM staff at this address:

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GENERAL INFORMATION ABOUT THE SES

BACKGROUND: The Senior Executive Service (SES) was established by the Civil Service Reform Act (CSRA) of 1978 and became effective in July 1979. CSRA envisioned a senior executive corps whose members have solid executive expertise, public service values, and a broad perspective of government and who would be held accountable for their performance. Key issues that the SES was designed to overcome:

- There was no effective, governmentwide system for selecting, preparing, paying, and managing the Government's top managers. They were governed by a variety of systems with multiple sets of complex rules and regulations. Comprehensive reform was needed to address the problems in staffing and managing senior executive positions.
- Minimal attention was given to an executive's managerial skills and expertise. Individuals were placed in positions responsible for managing billion-dollar Federal programs and for supervising thousands of employees with little or no managerial experience. There was widespread recognition that greater emphasis had to be placed on certifying the managerial competence of the Government's senior executives.
- Agencies had limited authority to appoint executives or to reassign them as needed to meet mission and program changes. The rank-in-position system limited rotation and reassignment opportunities for career employees and prevented the best use of executive talent. It was difficult to reward executives whose performance was outstanding or to reassign or remove executives whose performance was unacceptable.
- At the time, many of the top career positions were held by individuals who entered the Government at junior levels and spent their entire careers in the Federal service, many in the same agency or agency component. Executives needed to broaden their perspectives and view their responsibilities in the context of the larger corporate and public policy interests of the Government.

In creating the SES, CSRA established a unique executive corps, with the same executive qualification requirements for all members. It provided for one distinct personnel system for senior executive positions designed to provide greater agency flexibility for selecting and developing their executives, within a governmentwide framework that preserves the larger corporate interests of government. It also shifted to a rank-in-person concept to facilitate executive mobility.

KEY GOALS OF THE SES:

- Improve the executive management of the Government.
- Select and develop a cadre of highly competent senior executives with leadership and managerial expertise.
- Hold executives accountable for individual and organizational performance.
- Base pay, retention, and tenure on performance.
- Provide for an executive system that is guided by the public interest and free from improper political interference.

COVERAGE: The SES covers managerial, supervisory, and policy positions above grade 15 that are not filled by Presidential appointment with Senate confirmation. Some agencies and agency

components are excluded by law, such as independent government corporations and the intelligence agencies. Also, some positions are excluded by law, such as the Foreign Service and Administrative Law Judges. There are other non-SES systems that govern *non-executive* positions above GS-15 – those for which *technical* expertise, not leadership, is paramount (e.g., Senior Level, Scientific/Professional systems).

STRUCTURE OF THE SES: There are two types of SES positions – General and Career Reserved. A *General* position may be filled by a career, noncareer, or limited appointee. The same General position may be filled by a career appointee at one time and by a noncareer or limited appointee at another time. However, a *Career Reserved* position must always be filled by a career appointee. (Note that there are no "noncareer or career positions" in the SES.) By law, there is a governmentwide minimum number of positions (3,571) that must be career reserved.

- ***Criteria for Career Reserved Positions:*** A position is designated Career Reserved if it must be filled by a career appointee to ensure the impartiality, or the public's confidence in the impartiality, of the Government. Career Reserved positions are those that involve day-to-day operations, without responsibility for or substantial involvement in the determination or public advocacy of the major policies of the Administration or agency. They include positions in these occupational disciplines: adjudication and appeals; audit and inspection; civil or criminal law enforcement and compliance; contract administration and procurement; grants administration; investigation and security matters; and tax liability, including the assessment or collection of taxes and the preparation or review of interpretative opinions. They also include:
 - scientific or other highly technical or professional positions where the duties and responsibilities of the position are such that it must be filled by a career appointee to ensure impartiality;
 - other positions requiring impartiality, or the public's confidence in impartiality, as determined by the agency in light of its mission; and
 - positions that the law specifically requires be Career Reserved or be filled by a career appointee.

SES APPOINTMENTS: There are four types of SES appointments – career, noncareer, limited term, and limited emergency.

- ***Career:*** Competitive selection requirements and entitlements; no time limit.
- ***Noncareer:*** No competitive selection requirements; no entitlements; no time limit.
- ***Limited Term:*** Non-renewable appointment for up to 3 years for time-limited, project-type work.
- ***Limited Emergency:*** Non-renewable appointment for up to 18 months to meet a bona-fide, unanticipated, urgent need.

EXECUTIVE RESOURCES ALLOCATIONS

OPM allocates executive "spaces" to each agency on a 2-year basis, as specified in law. Flexibility has been built into the allocation process to allow for some adjustments during the biennial cycle, within statutory limits, to meet unanticipated needs. OPM works with agencies to identify acceptable alternatives, such as the use of temporary allocations.

STATUTORY REQUIREMENTS [5 U.S.C. 3133]:

- Each agency examines its SES position requirements and submits a written request to OPM for a specific number of SES positions for a 2-year period.
- OPM allocates SES, Senior Level (SL) and Scientific/Professional (ST) spaces to each agency on a biennial basis, after analyzing agency needs and consulting with OMB. OPM may adjust individual allocations, if an agency presents sufficient justification. However, the cumulative effect of all adjustments cannot increase the total governmentwide allocation by more than 5%.
- There is no statutory "cap" on total SES allocations. [Note: The Civil Service Reform Act of 1978 placed a governmentwide limit on the total number of SES positions, but this limit was removed in 1990 by the Federal Employees Pay Comparability Act (FEPCA).]

AGENCY FLEXIBILITY: Within their allocations, agencies have authority to establish and/or abolish positions and to reassign career executives to deal with variations in program and mission requirements. Agencies are responsible for their executive resources planning and utilization.

OPM ASSISTANCE: OPM can help agencies deal with unanticipated needs (e.g., critical program changes or emergencies) that make it difficult to live within their allocations. OPM can authorize some temporary spaces, and suggest other alternatives.

ALLOCATIONS PROCESS: Every 2 years, OPM formally asks agencies to review and prioritize their executive resources needs in conjunction with their strategic plans, budget requirements, and program performance. Based on this analysis, agencies send OPM a written request for SES, SL, and ST spaces.

- Agencies that ask for allocation increases provide a comprehensive, agencywide assessment of their executive resources needs, covering established and requested positions, and prioritize all current and proposed positions in terms of their relative contribution to the agency mission requirements.
- OPM considers the agency analysis and other factors, such as vacancy rates, overall agency funding levels, and personnel ceilings; consults with OMB, including the Resources Management Officers; and issues position allocations to agencies for 2 years.
- OPM may adjust an agency's allocation (up or down) during that 2-year period, on a case-by-case basis, if there are unanticipated changes in budgets or programs that can't be met within current allocations. In such cases, OPM may authorize the use of temporary allocations until the next biennial.

IMPACT OF ALLOCATIONS ON NONCAREER AND LIMITED APPOINTMENTS:

There are statutory limits on the numbers of SES noncareer and limited appointments [5 U.S.C. 3134].

- Total SES noncareer appointees *governmentwide* cannot exceed 10% of SES allocations.
- Total SES noncareer appointees *per agency* cannot exceed 25% of its SES allocation. (In some agencies, stricter limits have been imposed through their enabling or appropriations legislation, and a few agencies may exceed this limit.)
- Total SES limited appointees *governmentwide* cannot exceed 5% of SES total allocations.

The White House Office of Presidential Personnel distributes the total number of noncareer allocations allowed by law among the agencies. This is referred to as the "noncareer cap."

CURRENT SITUATION: With support from the President's Management Council, OPM achieved a 10 percent reduction in the SES over fiscal years 1994-1996, and continues to maintain reduced levels. There were no comparable reductions in SL or ST positions (i.e., non-managerial positions above grade 15), because the total number of these positions is relatively small compared with the SES. Since the focus has been on managing *total* executive resource levels, it would undermine the initiative to reduce SES positions and substantially increase the number of SL and ST positions. As of January 1, 2001, the governmentwide allocation levels were: 7,814 SES, 390 SL, and 376 ST allocations.

ESTABLISHING SES POSITIONS

Within the allocation OPM authorizes, each agency determines which positions will be established in the SES. Positions must meet both the SES functional criteria and grade level criteria prescribed in statute. The SES generally covers managerial, supervisory, and policy positions above grade 15 that are not filled by Presidential appointment with Senate confirmation.

- **Functional criteria:** A position meets the SES functional criteria if its incumbent engages in any of these activities:
 - Directs the work of an organizational unit;
 - Is held accountable for the success of one or more specific programs or projects;
 - Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
 - Supervises the work of employees (other than personal assistants); or
 - Otherwise exercises important policy-making, policy-determining, or other executive functions.
- **Grade level criteria:** The position must be classifiable above grade 15, based on the level of duties, responsibilities, and qualifications required by the job.

APPLYING THE SES CRITERIA: The SES was intended to be a corps of senior executives – not technical experts. In determining whether a position meets the criteria for placement in the SES, the agency needs to evaluate the position as a whole and determine if it functions as a part of the management team, or as an independent advisor or technical expert. This evaluation should consider the position's duties, responsibilities, and *qualification requirements*.

REQUIREMENT FOR A SPACE: An agency cannot fill a position in the SES without an authorized space allocation.

SENIOR LEVEL POSITIONS (SL)

There are two other personnel systems for positions that can be classified above the grade 15: the Senior Level (SL) system and the Scientific/Professional (ST) system. The nature of the work determines which system is appropriate. The SL system was established by the Federal Employees Pay Comparability Act of 1990 (FEPCA) to replace grades GS-16, 17, and 18 of the General Schedule, which were abolished.

CRITERIA: The SL system is for *non-executive* positions above grade 15 that do not meet the criteria for the SES, nor do they involve the fundamental research and development responsibilities that are characteristic of the Scientific/Professional (ST) system (see next page). Examples might include a high level special assistant or a senior attorney in a highly-specialized field who is not a manager, supervisor, or policy advisor.

SUPERVISORY DUTIES: SL positions may include some supervisory and related managerial duties, provided that these duties occupy less than 25 percent of the position's time. Positions in which supervisory and managerial work constitutes a major duty that occupies 25 percent or more of the position's time almost always meet the criteria for SES positions.

COMPETITIVE STATUS: Senior Level positions may be in either the competitive or excepted service.

SPACE REQUIREMENT: Executive agencies must have an SL space allocation from OPM before filling an SL position.

PAY: The SL system is "ungraded." The pay range for SL positions is between 120 percent of GS-15/1 and Executive Level IV.

SCIENTIFIC AND PROFESSIONAL POSITIONS (ST)

The Scientific and Professional (ST) system covers non-executive positions classified above the grade 15 level that involve performance of high-level research and development in the physical, biological, medical, or engineering sciences, or a closely-related field. All ST positions are in the competitive service.

R&D CRITERIA: Research and development positions are characterized by the following features:

- Systematic investigation of theory, experimentation, or simulation of experiments;
- Application of the scientific method, including problem exploration and definition, planning of the approach and sequence of steps, execution of experiments or studies, interpretations of findings, and documentation or reporting of findings; and
- Exercise of creativity and critical judgment, variation in which may materially affect the nature of the end product.

The qualifications, stature, and contributions of an individual involved in research and development have a direct and major impact on the level of difficulty and responsibility for the work performed. ST incumbents would be expected to have a graduate degree, significant research experience, and a national or international reputation in their field. Typically, the incumbent of an ST position:

- Has authored fundamental papers in the field of expertise that are widely used and cited;
- Has received significant honors from major organizations for his/her accomplishments and contributions; and
- Is sought as an advisor and consultant on scientific and technological problems that extend beyond his/her specialty.

SUPERVISORY DUTIES: ST positions may include some supervisory and related managerial duties, provided that these duties occupy less than 25 percent of the position's time. Positions in which supervisory and managerial work constitutes a major duty that occupies 25 percent or more of the position's time almost always meet the criteria for SES positions.

SPACE REQUIREMENT: Executive agencies must have an ST space allocation from OPM before filling an ST position.

PAY: The ST system is "ungraded." The pay range for ST positions is between 120 percent of GS-15/1 and Executive Level IV.

EXECUTIVE CORE QUALIFICATIONS (ECQs)

Executive qualifications are the primary selection criteria for the SES. While technical job-specific qualifications are important, the essence of the SES is the ability to lead. OPM has developed executive core qualifications (ECQs) that represent the critical leadership skills all executives need to succeed today and in the future.

REVISED CORE QUALIFICATIONS: The first set of executive qualifications, established at the beginning of the SES, remained in effect until 1994, when they were completely overhauled to reflect developments in executive competencies over time. OPM found that it needed to revise them again in September 1997, as a result of the rapidly-changing management environment and the need to focus increasingly on leadership and the ability to drive change. The revised ECQs are more than a change in language – they represent a shift from passive management to active leadership. The emphasis is on making things happen and getting results, rather than on managing a process. The current executive core qualifications are: leading change, leading people, results-driven, business acumen, and building coalitions/communication.

CHANGES BASED ON RESEARCH: The revised ECQs, and their underlying competencies, were based on extensive research into the attributes of successful executives in both the private and public sectors, including: a behavioral indicators study to update the executive competencies identified through a 1991 OPM survey of 10,000 supervisors, managers, and executives; an extensive review of private sector competency models and current literature on executive competencies; and focus groups of executives from a cross section of agencies and occupations.

The resulting ECQs were a collaborative effort. Federal agencies, private sector representatives, and the National Academy of Public Administration participated in their development. Members of the SES and the Senior Executives Association were encouraged to review an early draft and share their comments.

QUALIFICATIONS REVIEW BOARDS (QRBs)

An independent Qualifications Review Board, composed of executives outside the selecting agency, must certify that each individual proposed for career appointment in the SES has the requisite executive qualifications before he/she may be appointed. This QRB review is the critical last step in the SES selection process. By focusing attention on executive qualifications, the QRB helps ensure that technical skills do not outweigh leadership expertise in the selection of new senior executives.

OPM prescribes the criteria for establishing executive qualifications for career appointees. The criteria provide for consideration of demonstrated executive experience or successful participation in an OPM-approved candidate development program. They also provide flexibility to allow appointment of those with special or unique qualities that indicate a likelihood of executive success.

PEER REVIEW: QRBs provide a critical, independent *peer* review of a candidate's executive qualifications to be a member of the SES. This objective review assures that the Government is hiring executives with the leadership qualifications needed in today's environment, especially the ability to lead in times of change.

QRB MEMBERSHIP: OPM draws on SES members to serve on QRBs and to advise on QRB policy and procedures. Each Board normally consists of 3 SES members, each from a different agency. A majority of Board members must be SES career appointees.

CERTIFICATION: After the agency completes its merit staffing process and makes a selection, the agency requests QRB certification of the selectee's executive qualifications. OPM administers the QRBs, which meet weekly. A QRB reviews each case and either approves or disapproves the candidate's executive qualifications. If approved, the agency may proceed with the appointment. Disapprovals are usually due to the candidate not meeting the executive qualification requirements or not adequately addressing his/her qualifications in terms of the five executive core qualifications. The entire QRB certification process is usually completed in less than two weeks.

SUSPENSION OF QRB CERTIFICATION FOR SPECIFIC AGENCIES: When an agency head resigns or announces the intention to resign, or if the President nominates a new agency head, OPM suspends QRB case processing for career SES appointments in that agency until a successor is appointed. We take this action as a courtesy to the new agency head to afford him/her the greatest flexibility in making executive resources decisions. However, if an agency has a selection it considers urgent, the agency may ask OPM to forward it to a QRB. We consider such factors as whether the new agency head would have a personal interest in the selection, the organizational level of the position, the degree to which the candidate would be involved in policy matters, and how long it may be before the new agency head is appointed.

SES CAREER APPOINTMENTS

SES career appointments are made without time limitation and provide certain job protections and benefits that are not conferred on SES noncareer or limited appointees. Agencies may make career appointments to either General or Career Reserved positions, provided the individual meets the qualification requirements.

- Agencies must follow competitive merit staffing requirements for the initial career appointment to the SES or for appointment to a formal SES candidate development program. A Qualifications Review Board, administered by OPM, must certify an individual's executive qualifications before appointment.
- Agencies may noncompetitively reassign or transfer a current career SES appointee or reinstate a former career SES appointee. Generally, these actions do not require QRB approval.

MERIT STAFFING REQUIREMENTS: Each agency head appoints one or more Executive Resources Boards (ERBs) to conduct the merit staffing process for career appointments. ERBs review the executive qualifications requirements of each eligible candidate and make recommendations to the appointing official concerning the candidates.

- **Recruitment:** Agencies must announce SES vacancies that will be filled by initial career appointment to at least all Federal civil service employees and notify the United States Employment Service offices. To meet these requirements, agencies list their vacancies in OPM's governmentwide automated SES vacancy announcement system (USAJOBS). Agencies and applicants can access the information through a variety of ways, including OPM's website (www.usajobs.opm.gov).
- **Rating and Ranking:** All eligible candidates are rated and ranked on the basis of their knowledge, skills, and abilities and other job related factors, as reflected in the position's qualifications standards. The record must be adequately documented to show the basis for qualifications, rating, and ranking determinations. The ERB may delegate rating and ranking, but must certify the resulting list of best qualified candidates to the appointing official. The supervisor may recommend a selection, but the appointing official makes the final determination. The appointment cannot be effected until a Qualifications Review Board certifies the candidate's executive qualifications.

APPEALS: There is no appeal right on actions taken by the ERB, the QRB, or the appointing official. Other avenues afforded by law or regulation (e.g., prohibited personnel practice allegation or discrimination complaint) may be pursued if appropriate.

SES PROBATION: An individual's initial career appointment becomes final only after he/she has successfully completed a 1-year probationary period. This period begins on the effective date of the appointment and ends one calendar year later.

SES NONCAREER APPOINTMENTS

APPOINTMENT AFTER OPM AUTHORIZATION: Agencies may make SES noncareer appointments to General (not Career Reserved) SES positions, after obtaining a noncareer appointment authorization from OPM and approval from the White House Office of Presidential Personnel for each appointment. There is no time limit on the appointment, but the individual serves at the pleasure of the appointing official. Competition is not required, nor is Qualifications Review Board certification. The appointing official determines that the individual meets qualifications requirements.

REASSIGNMENT WITHIN AN AGENCY: An agency may reassign a noncareer appointee to another General SES position for which he/she qualifies, after obtaining OPM approval. No advance written notice to the appointee is required.

TRANSFER TO ANOTHER AGENCY: A noncareer appointee can be transferred to a General SES position in another agency, with OPM approval. The appointee must meet qualification requirements of the new position. If there is a transfer of function between agencies, noncareer appointees may be offered transfers at the discretion of the agency, with OPM approval.

REMOVAL: Noncareer appointees can be removed at any time, with a 1-day advance written notice that shows the effective date of the removal. The agency may include a statement of the reason for the action, but this is not required.

SUSPENSION: The law does not specify procedural requirements for suspending noncareer appointees for disciplinary reasons. Therefore, an agency may suspend noncareer appointees under whatever procedures it establishes.

- **120-day moratorium:** Removal or suspension of a noncareer appointee is **not** subject to the 120-day moratorium.
- **Appeals:** Removal or suspension of a noncareer appointee is **not appealable** to the Merit Systems Protection Board.

SES LIMITED APPOINTMENTS

Agencies may use two types of SES limited appointments to address short-term staffing needs at the senior executive level.

- **Limited Emergency Appointments**, for up to 18 months, to meet bona-fide, unanticipated, urgent needs.
- **Limited Term Appointments**, for up to 3 years, to positions the duties of which will expire in 3 years or less. Generally, these appointments are used for project-type positions or for positions established to facilitate transition between Administrations.

Limited appointments are not renewable. However, if the appointment is made for less than the period that OPM authorizes, the agency may extend the appointment to that period.

With few exceptions, limited appointments are not used to staff continuing positions – these positions are normally filled by career or noncareer appointment.

- **Additional time limits:** There is also a limit on the total time an individual can serve under a combination of limited term and limited emergency appointments: no more than an aggregate of 36 months in a 48-month period.
- **Limit on numbers of appointments:** The law restricts the total number of limited appointments to 5% of the total number of SES spaces allocated governmentwide.

OPM AUTHORIZATION: OPM must authorize each limited appointment in advance, unless the agency has signed a delegation agreement with OPM that authorizes the agency to make a certain number of limited appointments under specified circumstances without advance approval (for example, two-year rotating assignments to bring in persons from universities to a scientific organization within the agency). OPM and the National Science Foundation (NSF) have such an agreement that allows NSF to hire individuals from universities on a 3-year rotational basis.

Each written request for a limited appointment authority should provide information to explain the circumstances that warrant use of the authority.

- **Pool Authority:** By regulation [5 CFR 317.601], OPM has given each agency a pool of limited appointment authorities equal to 3% of its total SES space allocation, for use without OPM approval. However, an individual appointed under this pool authority must be a career or career-type Federal employee outside the SES. Agencies should exhaust their pool authorities, provided the proposed appointees meet the career appointment requirement, before requesting OPM approval of a limited appointment authority.

APPOINTMENTS: Limited appointments can be made to SES General (not Career Reserved) positions. Competition is not required, nor is Qualifications Review Board certification. The appointing official determines that the appointee meets the qualifications requirements. A limited appointee does not receive tenure and serves at the pleasure of the appointing official.

REASSIGNMENT WITHIN THE AGENCY: An agency can reassign a limited appointee to any General SES position for which he/she qualifies, without OPM approval. However, the new

position must meet the same criteria (e.g., urgent need, special project). No advance written notice of the reassignment is required.

TRANSFER TO ANOTHER AGENCY: A limited appointee can be transferred to a General SES position in another agency, with OPM approval. The appointee must meet the qualification requirements of the new position. If there is a transfer of function between agencies, limited appointees may be offered transfers at the discretion of the agency, with OPM approval.

TRANSITIONS AND PRESIDENTIAL NOMINEES: To help with transitions, OPM can make limited (and noncareer) appointment authorities available to agencies following the inauguration of a new President or the nomination of a new agency head. OPM must approve use of each appointment authority.

Presidential nominees may be given a limited (or noncareer) appointment while awaiting Senate confirmation, but cannot be appointed to the target position. Such individuals normally function in an advisory or consultative capacity in another position until confirmed. OPM must approve use of each appointment authority.

EXPIRATION OF THE APPOINTMENT: An agency must terminate a limited appointee when the appointment expires or when the maximum period of service permitted under law has been completed. The appointee is given a Notification of Personnel Action (Standard Form 50), usually prepared by the human resources office. An agency may give any amount and type of additional advance notice it wants.

- **Fallback rights:** After termination, a limited appointee is entitled to placement in his/her former position (or a position of like status, tenure, and grade) if certain conditions are met: the limited appointment was in the same agency as the one in which he/she held a career or career-conditional appointment in a permanent non-SES position; there was no break in service; and the termination was not for misconduct, neglect of duty, or malfeasance.

REMOVAL: Limited appointees can be removed at any time, with a 1-day advance written notice that shows the effective date of the removal. The agency may include a statement of the reason for the action, but this is not required. There is no placement right, unless the individual was appointed from a career or career-conditional appointment in a permanent position outside the SES in the same agency (see *Fallback rights*, above).

SUSPENSION: The law does not specify procedural requirements for suspending limited appointees for disciplinary reasons. Therefore, an agency may suspend limited appointees under whatever procedures it establishes.

- **120-day moratorium:** Removal or suspension of a limited appointee is **not** subject to the 120-day moratorium.
- **Appeals:** Removal or suspension of a limited appointee is **not appealable** to the Merit Systems Protection Board.

SES CAREER REASSIGNMENTS AND TRANSFERS

REASSIGNMENTS: Agencies can reassign career SESers to any SES position in the agency for which they are qualified.

- *Non-geographic* reassignments require a 15-day advance written notice, which the employee may waive.
- *Geographic* reassignments require consultation with the executive and a 60-day advance written notice.

Failure to accept a directed reassignment subjects the individual to removal under adverse action procedures. If separation is for failure to accept directed reassignment to a different commuting area, the individual is entitled to discontinued service retirement (if eligible) or severance pay, unless a memorandum of understanding or other written agreement provides for such geographic reassignments. Removal under these circumstances is appealable to the Merit Systems Protection Board.

- ***Moratorium on involuntary reassignments:*** Career appointees cannot be reassigned *involuntarily* within 120 days of the appointment of a new agency head, or the appointment of the career appointee's most immediate supervisor who is a noncareer appointee with the authority to make an initial appraisal of the career appointee's performance. The intent of this moratorium is to provide a "get acquainted" period to allow the new agency head and noncareer appointees to get to know the career senior executives and their skills and expertise. However, after 120 days, agency managers are free to reassign their career appointees.

TRANSFERS: A career appointee may be transferred to another agency to an SES position for which he/she is qualified, with the consent of the appointee and the gaining agency, except where there is a transfer of function between agencies.

- ***Transfer of function:*** A career appointee is entitled to accompany his/her function, if the appointee would otherwise be removed from the SES. Failure to accompany a transferred function subjects the individual to removal under adverse action procedures. If separation is for failure to accept a transfer of function to a different commuting area, the individual is entitled to discontinued service retirement (if eligible) or severance pay. Removal under these circumstances is appealable to the Merit Systems Protection Board.

SES DETAILS

Details are a management tool for dealing with short-term staffing needs. A "detail" is the temporary movement of an individual within, into, or out of the SES for a specified period, usually with the expectation that the employee will return to his/her regular position at the end of the detail. SES members can be detailed within the agency or to another agency. Details to certain non-Federal organizations, to international organizations, and to foreign governments are also permitted.

Details do not affect an SES member's appointment, pay, or benefits.

CONDITIONS: SESers may be detailed to another SES position or to a non-SES position, generally in increments of 120 days. This 120-day increment requirement does not apply to interagency details.

- **Position restrictions:** Any SES employee or non-SES employee may be detailed to a General SES position. However, only career SES employees and career-type non-SES employees may be detailed to a Career Reserved position. A noncareer SES employee may not be detailed to a competitive service position outside the SES.
- **To unclassified duties:** Agencies can detail an SES member to "unclassified duties" for 240 days. For a longer detail, the agency must determine whether the duties are at the SES level and then decide whether or not to establish an SES position.
- **For more than 240 days:** Competitive service merit promotion procedures must be observed when detailing *non-SES* employees to an SES position for more than 240 days. However, competition is not required, if the employee's executive qualifications have been certified by a QRB following successful completion of an OPM-approved SES candidate development program.
- **OPM Approval:** OPM approval is required for a detail of more than 240 days only if a *non-SES* employee is being detailed to an SES position that supervises other SES positions, or if an SES employee is being detailed to a position at GS-15 or below or an equivalent level.
- **Notice:** No advance notice is required.

EFFECT OF MORATORIUM ON DETAILS: If a career appointee is detailed during a moratorium, the first 60 days of the detail (or any combination of details) are not counted in calculating the 120 days. For example, if the employee is placed on a 90-day detail, the first 60 days would be added to the 120 days; and the moratorium would last 180 days.

120-DAY MORATORIUM

The Civil Service Reform Act of 1978 established a "get acquainted period" during top management transitions. This is a time for new Presidential appointees and other noncareer appointees to get to know their senior career executives and their skills and expertise. Agencies cannot take a variety of personnel actions until 120 calendar days after:

- the appointment of the agency head, or
- the appointment of a career appointee's most immediate supervisor, who is a noncareer appointee with the authority to make an initial appraisal of that career appointee's performance. (For removal actions, the restriction pertains to immediate supervisors who are noncareer appointees with the authority to remove the career appointee.)

This 120-day restriction affects involuntary reassignments, details, removals for performance, removals for failure to be recertified, and removals during probation. However, appointees may voluntarily waive the moratorium on reassignments and removals.

In addition, agencies cannot appraise and rate career appointees in the 120-day period following the beginning of a new Presidential Administration.

KEY DEFINITIONS

- **"Head of the agency"** means the head of an executive department (e.g., Treasury), a military department (e.g., Army), or an independent establishment (e.g., General Services Administration). It does not mean the head of a component within an agency (e.g., Internal Revenue Service in Treasury).
- **"Noncareer appointee"** (for this purpose) means an SES noncareer or limited appointee, a Schedule C appointee, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively. (Commissioned officers of the uniformed services are *not* considered noncareer appointees.)
- **"Most immediate supervisor"** refers to the noncareer appointee who is closest to the career executive in the supervisory chain and who has the authority to make an initial appraisal of the career appointee's performance. This does not mean a supervisor who functions solely as the reviewing official or final rater. However, this definition is different for removal for performance or for failure to be recertified, which define "most immediate supervisor" as a noncareer appointee who has the authority to remove the career appointee.
- **"Initial appraisal"** is the initial summary rating of the career appointee's performance made by the supervisor as part of the annual performance appraisal process. It does not include a recommendation by a higher level reviewer or the annual summary rating made by the appointing official.

INVOLUNTARY REASSIGNMENTS: Agencies may not involuntarily reassign SES career appointees during the 120-day moratorium, unless the appointee waives the moratorium in writing. This 120-day moratorium does not apply to a reassignment that results from an unsatisfactory performance rating, provided the rating was given before the appointment that triggered the

moratorium. The 15- and 60-day advance notices pertaining to reassignment may run concurrently with the 120-day moratorium.

DETAILS: Agencies may detail SESers during the moratorium. In calculating the 120 days for the moratorium on reassignments, any days (not to exceed a total of 60) during which the career appointee serves on detail are not counted against the 120 days. For example, if the employee is placed on a 90-day detail, the first 60 days would be added to the 120 days – the moratorium on involuntary reassignments would last 180 days. Moratoriums on other actions are not affected.

PERFORMANCE APPRAISALS: There is also a restriction on performance appraisals and ratings for career appointees within 120 days after the beginning of a new Presidential administration. "New Presidential administration" means the administration of a President other than the one in office immediately before the beginning of the current administration. When the new President is inaugurated on January 20th, appraisal actions may not be taken until May 20th.

The moratorium applies to all phases of the formal appraisal process leading to an annual summary rating: the supervisor's initial summary rating; any review by a higher level official; review and recommendation by the Performance Review Board (PRB); and the appointing official's annual summary rating. The length of the performance appraisal period is not extended by the moratorium – it delays the appraisal and rating actions.

REMOVALS FOR PERFORMANCE: The 120-day moratorium requirement also applies to the removal of a career appointee for performance reasons, except for a removal based on an unsatisfactory rating given before the appointment of the new agency head or noncareer supervisor that triggered the moratorium.

REMOVAL FOR DECERTIFICATION: Removal from the SES for failure to be recertified may not be effected within 120 days after the appointment of a new agency head or the appointment of the career appointee's most immediate supervisor who is a noncareer appointee with the authority to remove the career appointee.

REMOVAL OF A PROBATIONER: Removal of a career appointee serving a probationary period is subject to the 120-day moratorium, except for a disciplinary removal that was initiated before the appointment of the agency head or SES noncareer supervisor that triggered the moratorium.

PERSONNEL ACTIONS *NOT* AFFECTED BY A MORATORIUM: The 120-day restriction does not generally affect post probationary removals or suspensions for disciplinary reasons, removals as a result of reduction in force, or removals of noncareer and limited appointees and reemployed annuitants.

PRESIDENTIAL APPOINTMENTS OF CAREER SES MEMBERS

Career members of the SES who receive Presidential appointments have certain benefits and reinstatement rights. These were established to encourage career executives to serve at the highest levels of the Government and to broaden the pool the President can use to choose top managers.

RETENTION OF SES BENEFITS: An SES career appointee is entitled to elect to continue certain SES benefits, if the following conditions are met:

- The appointment is by the President, with or without Senate confirmation, to a civil service position in the Executive branch outside the SES, at a rate of basic pay at or equivalent to Executive Schedule Level V or higher. This includes a recess appointment.
- There must be no break in service between the SES career and Presidential appointments.
- **SES Benefits:** The executive may elect to retain some, all, or none of these SES benefits: basic pay, performance awards, rank awards, severance pay, annual and sick leave, and retirement. The appointing agency is responsible for advising executives of their election opportunity. The election decision must be in writing. The executive may change his/her election only once in a 12-month period.
- **Awards:** An executive who retains SES performance and/or rank award eligibility remains subject to the SES performance management system. While the executive retains eligibility for consideration for awards, the agency has discretion to decide whether to grant them.
- **Retirement:** Retirement coverage for an employee who receives a Presidential appointment with Senate confirmation depends on the position to which he/she is appointed and is not affected by any election to retain SES benefits. If the position is an Executive level position included in the list of Executive Schedule positions at 5 U.S.C. 5312-17, the employee is subject to mandatory Social Security coverage under CSRS Offset or FERS. If the position is not listed at 5 U.S.C. 5312-17, the employee retains the retirement coverage that applied under the SES career appointment.
- **Leave:** If an executive retains SES leave coverage, he/she continues both annual and sick leave coverage.
- **Pay:** If the executive retains SES basic pay, he/she is eligible for locality pay and special law enforcement pay that he/she would receive as an SES member. This is true even if the appointee is in an Executive Schedule position otherwise excluded from these payments.

REINSTATEMENT IN THE SES: An SES career appointee who receives a Presidential appointment (with or without Senate confirmation) is entitled to be reinstated to the SES after the Presidential appointment ends if: the Presidential appointment was to a civil service position outside the SES; there was no break in service between the career SES appointment and the Presidential appointment; and the executive leaves the Presidential appointment for reasons other than misconduct, neglect of duty, or malfeasance. (Intervening appointments, such as expert and consultant appointments, constitute a break and result in loss of directed reinstatement rights.)

OPM will direct the executive's reinstatement. The executive must apply to OPM within 90 after separation from the Presidential appointment. However, an individual may negotiate his/her own reinstatement directly with an agency, rather than asking OPM for assistance.

- ***Subsequent Presidential appointments:*** If an executive is serving in a Presidential appointment and receives another Presidential appointment without a break in service between the two appointments, the executive continues entitlement to SES reinstatement following termination of the second appointment. If there is an interim period between end of the first Presidential appointment and the beginning of the second (e.g., while awaiting Senate confirmation), the executive must be reinstated to the career SES before the effective date of the new Presidential appointment to preserve his/her reinstatement entitlement following the second appointment.
- ***Effect of a Resignation:*** When a Presidential appointee resigns, voluntarily or upon request, the agency in which the Presidential appointment was held may place the individual on a limited appointment (after OPM approval), pending reinstatement as an SES career appointee in that or another agency, to avoid a break in service.
- ***Reinstatement Procedures:***
 - ***Applying for Reinstatement.*** A Presidential appointee may apply for reinstatement assistance as soon as his/her resignation is requested or submitted, but not later than 90 days after separation. The appointee must apply in writing, specify the position held immediately before the Presidential appointment, and state the effective date for the resignation or separation. To the extent practicable, OPM will direct reinstatement within 45 days of the date OPM receives the application for reinstatement or the date of separation from the Presidential appointment, whichever is later. The executive's expressed geographic availability will be honored when possible. An appointee may negotiate his/her own reinstatement with an agency, rather than asking for OPM assistance, but the timeframes still apply.
 - ***Order of Precedence.*** OPM directs reinstatement in this order: the agency in which the appointee served as an SES career appointee before accepting the Presidential appointment, or its successor agency; the agency or agencies in which the executive served as a Presidential appointee; any other agency in the Executive branch with SES positions. The agency directed to reinstate the executive is responsible for assigning him/her to an SES position for which he/she meets the qualifications requirements. OPM may provide a temporary SES space to an agency that is reinstating a former Presidential appointee.
 - ***Agency Compliance.*** An agency has 30 days to comply with an OPM reinstatement order. An executive who declines a reinstatement ordered by OPM is not entitled to further OPM placement assistance.
- ***Separations.*** If an executive who is eligible for placement in the SES following a Presidential appointment decides instead to separate from Federal service, he/she may elect discontinued service retirement, if eligible.
- ***Probation:*** An executive who was serving an SES probationary period at the time of the Presidential appointment must complete the probationary period upon reinstatement.

SES PAY

At the top levels of an organization, an executive's personal qualifications and performance are often critical to the success or failure of key programs, and executives should be paid accordingly. Pay is also a key element in recruiting and retaining executives. SES pay was designed to allow agencies to factor performance into their pay-setting decisions and consider other elements such as expertise brought to the position, qualifications required, scarcity of qualified personnel, pay for comparable private sector personnel, and geographic location, as well as the duties and responsibilities of the executive's position and its organizational location.

BASIC PAY FOR THE SES: The President sets the rates of basic pay for the SES, subject to these requirements: there must be at least five rates of basic pay; the lowest rate is no lower than 120% of base pay for GS-15, step 1; and the highest rate cannot exceed the rate for Executive Schedule Level IV. Currently, there are six basic pay rates for the SES. SES rates and rates for the Executive Schedule for 2001 are as follows:

<u>SES Basic Pay</u>	<u>Plus DC Locality Pay</u>	<u>Executive Schedule</u>
ES-1 = \$109,100	ES-1 = \$120,261	Level I = \$161,200
ES-2 = \$114,200	ES-2 = \$125,883	Level II = \$145,100
ES-3 = \$119,400	ES-3 = \$131,615	Level III = \$133,700
ES-4 = \$125,500	ES-4 = \$133,700	Level IV = \$125,700
ES-5 = \$125,700	ES-5 = \$133,700	Level V = \$117,600
ES-6 = \$125,700	ES-6 = \$133,700	

(Note: Locality pay rates for 2001 for other geographic areas are posted on OPM's website at: www.opm.gov/oca/payrates.)

SETTING INDIVIDUAL PAY RATES: The agency head sets basic pay for new SES appointees at any one of the six rates.

ADJUSTING PAY: An agency can adjust the basic pay rate once in any 12-month period. Pay can be raised any number of rates (e.g., from ES-3 to ES-5), but it can be lowered only one rate at a time and only for performance or disciplinary reasons. The 12-month restriction applies even if the individual changes from one SES appointment (e.g., limited term) to another SES appointment (e.g., noncareer) in the same agency. If an appointee transfers to an SES position in another agency, the pay level is negotiable – it may be set at any rate, and the transfer begins a new 12-month waiting period if the rate is changed.

LOCALITY PAY: The President may extend locality pay to non-General Schedule positions, including the SES (but not the Executive Schedule). Locality pay entitlement is based on the official duty station. Basic pay plus locality pay for SES members cannot exceed Executive Level III (\$133,700 in 2001). Locality pay is included in calculations for retirement, life insurance, thrift savings, severance pay, advances in pay upon appointment, and lump-sum annual leave payments upon separation. However, it is not included in calculations for performance awards.

AGGREGATE LIMIT ON PAY: SES members are subject to the statutory limit on aggregate compensation. Basic pay and other compensation paid during a calendar year cannot exceed the pay rate for Executive Level I of the Executive Schedule, which is \$161,200 (in 2001). The aggregate limit applies to basic pay, locality pay, awards (rank, performance, incentive), physicians

comparability allowances, special pay adjustments for law enforcement officers, recruitment and relocation bonuses, retention allowances, and other similar payments.

Except for retention allowances, any excess amount is carried over and paid as a lump sum at the beginning of the next calendar year. That payment must be taken into account when applying the Level I ceiling for the new calendar year. If either a performance award or a Presidential rank award would cause an executive's aggregate compensation to exceed the Level I ceiling by the end of the calendar year, the excess amount is withheld from the award, rather than from the individual's basic pay. The withheld excess will be paid at the beginning of the following calendar year.

PAY FLEXIBILITIES: Agencies have discretionary authority to provide additional compensation to meet recruitment, relocation, and retention needs.

- ***Recruitment and Relocation Bonuses:*** Agencies may pay as a lump sum *recruitment bonuses* for new appointees and *relocation bonuses* for current employees who are moving to a different commuting area of up to 25 percent of basic pay, when they would encounter difficulty in filling the position in the absence of a bonus. To receive these bonuses, an employee must sign an agreement to complete a period of service with the agency – at least 6 months in the case of a recruitment bonus. These payments are not considered a part of basic pay.
- ***Retention Payments:*** Agencies may pay a *retention allowance* (paid bi-weekly) of up to 25 percent of basic pay to an employee, if the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and the agency determines that without the allowance the employee would be likely to leave the Federal Government, whether or not other employment is planned. These payments are not considered a part of basic pay.
- ***Other Flexibilities:*** Agencies may also pay preemployment interview expenses and travel and moving costs for new appointees. Agencies may advance pay for new appointees up to 2 pay periods (unless the appointee is the agency head). SES members are also covered by the special pay provisions for law enforcement officers and physician comparability allowances.

ANNUAL AND SICK LEAVE

SES appointees are covered by the Federal leave system – they earn annual and sick leave. However, individuals who are appointed by the President, with or without Senate confirmation, are not covered by the Federal leave system – they do not earn annual and sick leave and cannot be charged leave for absences from work.

ANNUAL LEAVE. Like all other employees, SES appointees earn 13, 20, or 26 days of annual leave a year, depending on years of service. Annual leave accrues incrementally, i.e., 4, 6, or 8 hours every 2 weeks. SES appointees may carry over up to 90 days of annual leave to the next leave year.

SICK LEAVE. SES appointees also earn 13 days of sick leave each year (which accumulates without limit in succeeding years). Sick leave also accrues incrementally, i.e., 4 hours every 2 weeks. In certain situations, employees may use sick leave for family care purposes. They may use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. They may also use sick leave for adoption or bereavement.

FAMILY AND MEDICAL LEAVE. Under the Family and Medical Leave Act of 1993 (FMLA), an employee is entitled to a total of 12 workweeks of *unpaid* leave during any 12-month period for: the birth of a child and care of the newborn; the placement of a child with the employee for adoption or foster care; the care of an employee's spouse, son or daughter, or parent with a serious health condition; and an employee's own serious health condition that makes him/her unable to perform the duties of his/her position. An employee may substitute annual leave or sick leave, as appropriate, for unpaid leave under the Family and Medical Leave Act.

LEAVE TRANSFER AND LEAVE BANK PROGRAMS. An employee who has a personal or family medical emergency and who has exhausted his/her own leave may receive donated annual leave from other Federal employees through the voluntary leave transfer or leave bank programs. All agencies have a leave transfer program, and they may also choose to establish a leave bank for their employees.

OTHER LEAVE. In addition, employees are entitled to court leave, military leave, leave for bone marrow or organ donation, and other types of leave. Additional information on the Government's leave programs is available at OPM's website at: www.opm.gov/oca/leave/index.htm.

PERFORMANCE MANAGEMENT

One of the goals of the SES is to hold senior executives accountable for their individual and organizational performance. Using a performance management program that is results-driven and linked with the agency's strategic planning initiatives is an effective means of achieving this goal.

PERFORMANCE MANAGEMENT SYSTEMS: Agencies establish SES performance management systems that provide for planning and communicating performance expectations, identifying performance elements and the requirements against which performance will be assessed, monitoring performance, appraising and rating performance, and using performance results as a basis for pay, awards, and other personnel decisions. The law requires that systems have at least three summary rating levels: unsatisfactory, minimally satisfactory, and fully successful.

SENIOR EXECUTIVE PERFORMANCE PLANS: Each SES member (including career, noncareer, and limited appointees) must have an individual performance plan that outlines goals and expectations for the appraisal period. These plans may be modified during the appraisal period, if there are changes in agency or organizational priorities, available resources, etc.

- **Consultation:** Supervisors develop plans in consultation with the executive.
- **Performance Elements:** The plan identifies performance elements (the goals or work to be done) and designates which are critical – those of such importance that unsatisfactory performance on the elements would result in unsatisfactory performance in the position. The elements must reflect both individual and organizational performance.
- **Performance Requirements:** The plan identifies performance requirements (accomplishment expectations) for each element.

APPRAISING PERFORMANCE: SES appointees must be given an annual summary rating at least once a year. The agency sets a minimum appraisal period (at least 90 days) that an executive must serve under his/her performance plan before being rated. The appraisal period can be ended any time after the minimum period, if there is an adequate basis on which to rate an executive's performance.

- **Progress Review:** Supervisors must monitor each senior executive's performance during the appraisal period and give the executives feedback on progress in meeting performance goals and expectations. Supervisors must hold at least one progress review with executives during the appraisal period.
- **Initial summary rating:** The supervisor rates each critical performance element, derives an overall summary rating, and discusses the initial rating with the executive.
- **Higher level review:** The agency system must provide an opportunity for a higher level review of the supervisor's initial summary rating, which occurs before the rating is forwarded to the Performance Review Board.
- **Performance Review Board action:** Agencies must establish Performance Review Boards to make recommendations to the appointing official on the performance of executives, including

recommendations on performance ratings and bonuses. A PRB helps to assure consistency and objectivity in appraising executive performance.

- Each PRB has three or more members appointed by the agency head. PRBs can include all types of Federal executives (e.g., noncareer appointees, military officers, and career appointees) from within and outside the agency, preferably at the SES or equivalent level. Non-federal employees may also serve (e.g., retirees or university personnel). However, when appraising career appointees, or recommending performance awards for career appointees, more than one-half of the membership of a PRB must be SES career appointees.
- ***Annual summary rating:*** The annual summary rating is the official rating of record assigned by the appointing official, after considering the Performance Review Board's recommendations. There is no appeal of the annual summary rating. A career appointee who is removed from the SES as a result of the performance rating may request an informal hearing before the Merit Systems Protection Board on the removal, but MSPB has no authority to take official action as a result of the hearing.

MORATORIUM: Career appointees may not be given performance ratings within 120 days after the beginning of a new Presidential administration (i.e., the administration of a President other than the one in office immediately before the beginning of the current administration).

USING APPRAISAL AND RATING INFORMATION: The annual summary rating and the appraisal information on which it is based should be used as a basis for making decisions on pay adjustments, performance awards, recertification, removals, and reduction in force. Performance should also be a factor in assessing a senior executive's continuing development needs.

AWARDS AND OTHER RECOGNITION

The law authorizes agencies to grant special recognition, awards, and incentive payments to SES members to help attract, retain, recognize, reward, and motivate highly competent executives. These payments and forms of recognition include: performance awards (bonuses); Presidential Rank Awards; and other forms of recognition. By law, only career appointees are eligible for rank and performance awards.

- *Presidential rank awards* and *performance awards* (bonuses) recognize overall high-level performance by SES career appointees. Rank awards are based on service over an extended period of time, while bonuses reflect performance over a single appraisal period. A single outstanding performance rating does not justify a rank nomination, while it may justify a bonus. Conversely, a record of outstanding ratings over a period of years suggests an individual may be a candidate for a rank award whether or not the individual has received a bonus each year.
- *Other forms of recognition* are available to recognize a single, significant act or service that may have occurred in a day, a month, or any other specified time frame and is not tied to overall performance.

PERFORMANCE AWARDS: Agencies may give performance awards, commonly called "bonuses," to career appointees to recognize and reward excellence over a 1-year performance appraisal cycle. To be eligible, individuals must have received at least a "fully successful" rating.

- *Award pool:* The law provides two methods for configuring the award pool: bonuses paid cannot exceed the greater of 10% of the aggregate basic pay for the agency's career SES appointees for the year before bonuses are paid, or 20% of the average annual rates of basic pay to career SES appointees in the year bonuses are paid.
- *Individual award amounts:* Performance awards must be at least 5% but no more than 20% of basic pay as of the end of the performance appraisal period. An individual may not voluntarily agree to accept a bonus of less than 5%.
- *Award determinations:* The agency head determines who receives a performance bonus and the amount of the award, after considering recommendations from the agency's Performance Review Board (PRB). When making bonus recommendations, the PRB must be composed of a majority of career SES members.
- *Payment procedures:* Bonuses are paid in a lump sum. Payments are not subject to retirement, health benefits, or life insurance deductions, and they are not included in the "high-three" average pay computation for retirement benefits or in basic pay for thrift savings plan computations. Payments are subject to income tax withholding, and are subject to FICA tax withholding if the individual is in FERS or CSRS Offset. Bonuses are subject to the Executive Level I ceiling on total compensation for a calendar year.

OTHER FORMS OF RECOGNITION: Agencies may grant cash, honorary, or informal recognition awards to SES members, individually or as a member of a group, to recognize a suggestion, an invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations, or

achieves a significant reduction in paperwork. Agencies may also recognize a special act or service in the public interest in connection with official employment.

- ***Restrictions on Cash Awards for Noncareer Appointees:*** There is a statutory prohibition on granting awards to senior politically-appointed officers during the Presidential election period (between June 1 of a Presidential election year and the following January 20). This prohibition applies to Schedule C appointees and SES members who are not career appointees.

PRESIDENTIAL RANK AWARDS: There are two types of awards to recognize and reward SES career appointees who have demonstrated exceptional performance over an extended period of time. The *Distinguished Executive* rank, which the President confers for "sustained extraordinary accomplishment" to no more than 1 percent of the career SES governmentwide, includes a lump-sum payment of 35 percent of base pay, a distinctive gold pin, and a framed certificate signed by the President. The *Meritorious Executive* rank, which the President gives for "sustained accomplishment" to no more than 5 percent of the career SES governmentwide, includes a lump-sum payment of 20 percent of base pay, a distinctive silver pin, and a framed certificate signed by the President.

- ***Restrictions:*** The recipient of either a Distinguished or Meritorious Executive rank award may not receive the same award again during the 4 fiscal years following the one for which the award is given. However, there is no restriction on receiving one rank award and then the other at a closer interval, nor is there a requirement that an individual receive a Meritorious Executive rank before receiving a Distinguished rank. There are no restrictions on receiving both a rank award and a performance award during the same calendar year.
- ***Nomination and selection procedures:*** OPM issues an annual call for rank award nominations, which includes the criteria and deadline for submitting nominations. The Director of OPM reviews agency nominations and recommends candidates to the President for approval. Review boards composed of private citizens assist the Director in this effort. OPM also conducts an inquiry to verify the qualifications of nominees the boards recommend for the Distinguished Executive rank. The President makes the final selections from the nominees recommended by the Director of OPM.
- ***Payment:*** Rank awards are paid in a lump sum, and are subject to the Executive Level I ceiling on total compensation. They are not subject to retirement, health benefits, or life insurance deductions, nor included in the "high three" average pay computation for retirement benefits or in basic pay for thrift savings plan computation. Payments are subject to income tax withholding and to FICA tax withholding if the individual is in FERS or CSRS Offset.

REMOVALS FROM THE SES FOR POOR PERFORMANCE

Agency managers can take a performance-based action after the career appointee has received a performance plan, has been given a progress review, has served the minimum appraisal period, and his/her performance has been rated.

RATING REQUIREMENTS:

- Each career appointee must be given an individual performance plan with performance elements (work to be done or goals) and performance requirements (performance expectations). Plans must be developed in consultation with the appointee.
- Appraisal periods are generally 1 year, but they can be a minimum period of 90 days, as long as there is an adequate basis on which to rate the executive's performance. The appointee must operate under the plan for a minimum of 90 days before he/she can be rated.
- The supervisor must conduct at least one progress review with the executive during the rating period.
- The supervisor makes the initial summary rating, to which the appointee may respond. The agency Performance Review Board then reviews the rating and makes a recommendation to the appointing official. The appointing official determines the annual summary rating.
- If the rating is unsatisfactory, the agency has two options: remove the individual from the SES, or reassign or transfer him/her to another SES position. If the executive is retained in the SES, the agency should provide assistance in improving performance. There is no requirement for a formal performance improvement plan, as there is for positions at grade 15 and below (except when an appointee is conditionally recertified – see Recertification.)

REMOVAL REQUIREMENTS

- The appointee is given a 30-day written notice before the removal from the SES.
- If eligible, the individual may elect discontinued service retirement.
- Performance removals are not appealable, but the individual can request an informal hearing before MSPB.
- A performance removal is subject to the 120-day moratorium, unless it is based on an unsatisfactory rating given before the appointment of the new agency head or noncareer appointee that triggered the moratorium.

PLACEMENT AT GRADE 15: Following removal from the SES, the individual is entitled to placement in a non-SES position at grade 15 or above, for which he/she is qualified, with saved base pay. If there is no vacant position, the agency must create one. If the individual has not completed SES probation, the fallback right applies only if he/she entered the SES from a career or career-type appointment.

RECERTIFICATION

The Ethics Reform Act of 1989 established triennial SES Recertification "to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the SES." Every 3 years, agencies determine whether their career SESers have performed satisfactorily as executives over that time period. There have been four cycles thus far: 1991, 1994, 1997, and 2000.

COVERAGE: SES career appointees who have 156 weeks of continuous SES service are subject to recertification. The 156 weeks includes any service as an SES appointee, whether career, noncareer or limited, in any agency.

AGENCY RECERTIFICATION PROCEDURES: An agency must develop written recertification procedures in consultation with their career executives and obtain OPM approval before implementation.

DETERMINATIONS: The agency head makes the recertification determination, based on recommendations from the supervisor and the Performance Review Board. An executive may be recertified, conditionally recertified, or not recertified.

- If an executive is recertified, he/she remains in the SES.
- If an executive is conditionally recertified, the executive is retained in the SES under a performance improvement plan, and a new recertification determination is made at the end of 12 months.
- If an executive is not recertified (i.e., "decertified"), he/she is removed from the SES and placed in a grade 15 position.

DECERTIFICATION: After the decertification determination is made, the executive is given a 30-day advance written notice before the removal date with information about the non-SES position in which he/she will be placed. If eligible, the executive may elect discontinued service retirement, without the annuity reduction for retirement under age 55.

- Decertification removals are appealable to the Merit Systems Protection Board.
- Decertification removals are subject to the 120-day moratorium – removal may not be effected until 120 days after the appointment of a new agency head, or appointment of the career appointee's most immediate supervisor who is a noncareer appointee with the authority to remove the career appointee.

PLACEMENT AT GRADE 15: Following removal from the SES, the individual is entitled to placement in a non-SES position at grade 15 or above, for which he/she is qualified, with saved base pay. If there is no vacant position, the agency must create one. In placing the executive, the agency may not separate or reduce in grade another employee.

PERFORMANCE REMOVAL VS. DECERTIFICATION: *Performance* removal determinations are based on an assessment of performance during the rating period. They are not appealable to MSPB, although the executive can request an informal hearing. *Decertification*

determinations are based on an assessment of performance over at least a 3-year period. Removal for non-recertification is appealable to MSPB.

CONTINUING LEARNING

Ongoing development of current and potential executives is critical to their effective performance as leaders in an environment of constant change and advancing technology, as well as to enhancing organizational achievement. There are many ways to provide training and development opportunities for executives, including formal and informal training experiences, seminars, forums, and mobility assignments. OPM offers orientation programs for newly-appointed members of the SES as well as development opportunities at three interagency residential training centers.

SES BRIEFINGS: Several times a year, OPM sponsors 2-day orientation programs for new career and noncareer SES appointees. Participants are briefed about their role as senior executives and given introductory information about the SES. Key Administration officials and others provide insights and information on current domestic and foreign policy issues and initiatives, as well as advice about working with Congress. Presentations emphasize the senior executive's corporate leadership responsibilities for meeting the challenges facing a Government undergoing change. These sessions also provide an opportunity for new executives to begin to interact as a community and build the corporate perspective.

RESIDENTIAL PROGRAMS: OPM manages three interagency residential development and training centers for current and future executives and managers: the Federal Executive Institute (FEI) and two Management Development Centers (MDCs). The curriculum is designed to contribute to the corporate education of government leaders, including career and noncareer executives and managers, senior policy specialists, political appointees, and Presidential Management Interns, as well as personnel in similar positions from State and local governments and the governments of other nations.

- ***Federal Executive Institute (FEI):*** FEI is a learning center that brings SES members and high-performing grade 15s together for programs that help executives develop broad corporate viewpoints, understand their Constitutional roles in government, and enhance essential leadership skills. *Leadership for a Democratic Society* is a 4-week program in which executives interact with colleagues from other agencies and build corporate perspectives by enhancing their skills and exchanging ideas to improve program performance through the exploration of the special nature of the public service culture in the United States. The *Center for Executive Leadership* presents shorter programs (2 to 5 days) that provide continuing learning experiences for managers and executives. The center offers interagency development programs that focus directly on building skills needed to bring about change in challenging times. The center also offers single-agency consulting and training tailored to specific agency needs. For specific information about these programs, you may contact the Federal Executive Institute, at the following address:

The Federal Executive Institute
1301 Emmet Street
Charlottesville, VA 22903-4899
(804) 980-6200; Fax: (804) 979-1030
email: fei@opm.gov

- ***Management Development Centers (MDCs):*** The Eastern and Western Management Development Centers focus on developing leadership and management skills of managers and

executive candidates in an interagency environment. The core management curriculum addresses the competencies Federal managers need at the full performance level and supports the transition from manager to executive. Other professional development programs deal with public management and national policy issues. The centers offer a variety of 1- to 2-week residential seminars. For specific information about these programs, you may contact the Management Development Centers at the following addresses:

Eastern Management Development Center
101 Lowe Drive
Shepherdstown, WV 25443-9601
(304) 870-8000 Fax: (304) 870-8001
email: emdc@opm.gov

Western Management Development Center
3151 South Vaughn Way, Suite 300
Aurora, CO 80014-3513
(303) 671-1010 Fax: (303) 671-1018
email: wmdc@opm.gov

You can find additional information about the Federal Executive Institute and the Management Development Centers on the OPM website at: www.opm.gov/leader.

SES CANDIDATE DEVELOPMENT PROGRAMS: Agencies have the authority to establish formal SES Candidate Development Programs (CDPs) which require OPM approval before they begin operation. These programs are designed to develop pools of qualified candidates for the SES. They focus on developing the leadership skills and expertise needed for executive success and advance the goal of a broad corporate perspective through interagency training and wide-ranging developmental experiences. Participants are selected through competitive merit staffing procedures. CDP graduates whose executive qualifications are certified by a Qualifications Review Board are eligible for noncompetitive career appointment to the SES.

REDUCTION IN FORCE

Reduction in force is a management tool for dealing with the consequences of abolishing functions or positions. It is not a tool for dealing with performance issues. There are other alternatives designed specifically to address serious performance problems, such as performance removals and decertification.

When an agency abolishes SES positions due to reorganizations, eliminated programs or functions, or reduced resources, there are several alternatives for dealing with the SES members who occupy these positions. They can be reassigned to vacant positions anywhere in the agency. They can be offered early retirement (if eligible). Agencies can help them find job opportunities elsewhere in Government. Reduction in force is usually the last resort. Once there is a decision that RIF is necessary, the primary factor in determining which executives will be affected is performance.

KEY STATUTORY REQUIREMENTS: [5 U.S.C. 3595]

- Agencies establish competitive procedures for determining who is removed during a RIF that affects career appointees. These procedures must ensure that RIF determinations are based primarily on performance.
- The agency must place a career executive who has completed the probationary period in any SES vacancy for which qualified.
- If the agency cannot place the executive in that agency, OPM has 45 days to try to place the executive elsewhere in the Government. If the executive cannot be placed in SES, he/she is removed from the SES, but is entitled to placement in his/her agency at GS-15 with saved base pay.
- OPM can require an agency to take any action that OPM considers necessary to carry out a RIF placement.
- A career executive has an appeal right to MSPB on agency compliance with competitive RIF procedures.

THE RIF PROCESS(Note that procedures may vary slightly, depending on whether or not the SESer has completed probation.)

There is no "one way" to conduct an SES reduction in force. Both the law and regulations give agencies a great deal of flexibility to develop RIF plans to meet their size, functions, and mission needs.

- ***RIF plan:*** The agency's written RIF plan sets the competitive area, describes how retention registers will be constructed, how executives will be ranked, and how performance will factor in.
- ***Competitive procedures:*** The agency defines the area of competition. It may be the full agency or a major component of the agency, but it should be defined to ensure adequate competition. The agency's career SES members in the competitive area are organized on retention registers, based on performance and other factors, as set out in the agency plan.

Individuals with the lowest retention standing are identified for reduction in force. [For RIF purposes, "agency" means a cabinet department, or an independent establishment. For example, the Department of Defense is one agency, with Army, Navy, and Air Force being components within that agency.]

- ***Placement in the agency:*** Executives identified for RIF are entitled to placement in any SES position in the agency for which they are qualified. Since "agency" refers to cabinet department or independent establishment, this right cannot be restricted to jobs in an organizational component, regardless of the competitive area established for the RIF. If there is no such position, the agency head certifies that fact to the Director of OPM in writing, and the individual is then entitled to OPM placement assistance. The agency must continue to try to place the individual in the agency during the OPM priority referral period.
- ***Advance notice:*** The executive is entitled to two notices. The first notice advises that he/she has been released from the retention register and cannot be placed in the agency. This notice must be given at least 45-days before removal from the SES. This usually occurs at the time the agency refers the executive to OPM for placement assistance. The second is a 1-day notice before the removal date, which is given after OPM notifies the agency that the placement effort was unsuccessful.
- ***Removal and placement outside the SES:*** If OPM cannot place the executive in an SES position in another agency, the original agency removes the executive from the SES and places him/her in a vacant grade 15 position in that agency. If no vacancy exists, the agency must create one. Executives removed from the SES as a result of RIF are entitled to appeal to the Merit Systems Protection Board on the competitive procedures used. If eligible, the executive may take discontinued service retirement in lieu of placement at grade 15.

OPM 45-DAY PLACEMENT PROGRAM

- The executive asks for placement assistance from OPM and provides qualification and other background information to help with OPM referrals.
- OPM formally refers the executive to agencies for specific SES vacancies or for general priority consideration. The agency must give the executive bona fide consideration. Interviews are strongly encouraged.
- If there is another SES position for which the individual is qualified within his/her area of availability, the agency may offer that position instead of the one to which referred. The agency must match a priority candidate's current rate of basic pay, unless the individual voluntarily agrees to accept a lower rate.
- Any agency objection to the candidate's qualifications must be based on the professional/technical qualifications in the position standard. An agency may not object solely on lack of agency-specific experience, if the appointee is otherwise qualified.
- If the executive declines a reasonable offer of placement, OPM's placement efforts will cease. The appointee may be removed from the SES at the expiration of the agency notice period.

OPM may provide a temporary SES space allocation to facilitate a priority placement.

MORATORIUM: The 120-day moratorium on certain removal actions does not apply to a removal as a result of RIF.

FALLBACK RIGHTS

A career SES appointee is entitled to be placed ("fallback") in a position outside the SES, with saved base pay, when removed from the SES under certain circumstances. The appointee may elect discontinued service retirement, if eligible, in lieu of fallback. These are the circumstances:

- During SES probation, for other than disciplinary reasons, if the individual held a career or career-conditional appointment, or an appointment of equivalent tenure, at the time of his/her appointment to the SES.
- After SES probation, as the result of a less than fully successful performance rating.
- After SES probation, as the result of a reduction in force.
- For failure to be recertified.

CONDITIONS OF OFFER: The placement offer must be to a continuing position (i.e., one that will last at least 3 months); the position must be at GS-15 or above, or equivalent; the individual must meet the qualifications requirements for the position; and the tenure of the appointment must be equivalent to the tenure of the appointment he/she held at the time of entry into the SES. The placement may not cause the separation or reduction in grade of any other employee. If there is no current vacant position for which the individual is qualified, the agency has to create one.

AGENCY RESPONSIBILITY FOR PLACEMENT: It is the agency's responsibility to place the employee in an appropriate position within the agency. In the rare event that internal placement is not possible, the agency arranges for a transfer to an appropriate position in another agency. Except when a transfer of function is involved, the transfer must be mutually acceptable to both the employee and the gaining agency.

- ***RIF situations:*** A reduction in force (RIF) often will affect both SES and non-SES positions and personnel, and it may be difficult to find a position outside the SES in which to place an SES member. Even so, the agency is obligated by law to place the individual in a continuing position at GS-15 or above.
- ***Abolished agencies:*** If an agency is being abolished (without a transfer of functions) and an employee is being removed from the SES within 3 months of the effective date of the abolishment, the employee is not entitled to placement in a position outside the SES in the agency, since there is no continuing position.

ADVERSE ACTIONS

SES appointees may be removed from the Federal service or suspended for more than 14 days for misconduct, neglect of duty, malfeasance, failure to accept a directed reassignment, or failure to accompany a position in a transfer of function.

COVERAGE: Career appointees who have completed SES probation. (Some probationers and limited appointees are covered, depending on their status before entering the SES.)

SUSPENSION: Agencies may suspend members of the SES for more than 14 days. The law is silent on suspensions of 14 days or less, so there are no provisions for such suspensions. An agency may issue a reprimand or admonishment for offenses that do not warrant a suspension for more than 14 days.

DISCIPLINARY REMOVAL VS. UNACCEPTABLE PERFORMANCE: An agency may find it difficult at times to distinguish between unacceptable performance and misconduct, neglect of duty, or malfeasance. Each may result in the appointee's failure to carry out significant duties and responsibilities of the position. However, unacceptable performance generally results from the appointee's inability to perform due to a lack of managerial competency or technical knowledge. Misconduct, neglect of duty, and malfeasance, on the other hand, denote intentional wrongdoing on the part of the appointee.

OFF-DUTY CONDUCT: If an agency wishes to take disciplinary action based on an appointee's off-duty actions or misconduct, it must demonstrate a nexus between the off-duty actions and the appointee's ability to discharge the responsibilities of his/her position.

PROCEDURES: A 30-day advance written notice is required that addresses the nature of the proposed action, specific reasons for the action, and other information. The appointee has a right to review the documentary evidence used to support the disciplinary action, is entitled to respond both orally and in writing, and is entitled to representation. After considering the appointee's response, the agency may substitute a less severe penalty, such as suspension for more than 14 days or a reprimand. The agency must give the appointee a notice of final decision (including mitigation of penalty), with the reason and effective date of the action.

120-DAY MORATORIUM: It does not apply to adverse action removals or suspensions.

PLACEMENT: An appointee removed for adverse action is not entitled to placement in a position outside the SES.

APPEALS: Adverse action removals and suspensions are appealable to the Merit Systems Protection Board.